COURT'S ORDER WHETHER THE CASE IS OR IS NOT APPROVED FOR REPORTING

{**Chapter VIII, Rule 32(2)(b)**}

Description of the Case.

CRIMINAL APPEAL No. 1340 of 2001
(Old No. 415 of 1988)

Vikram Singh S/o Sri Jahar Singh,
R/o Vill. Doona Kot, Tehsil Didihat, Distt. Pithoragarh

.....Appellant

Versus

The State **.....Respondent**

Sri Lokendra Dobhal, learned counsel for the appellant
Sri Harish Pujari, learned Addl. GA for the State

Approved for reporting.
~~Not approved for reporting.~~

Dated: October 30, 2007

(Dharam Veer, J.)

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

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Sri Lokendra Dobhal, learned counsel for the appellant
Sri Harish Pujari, learned Addl. GA for the State

HON. DHARAM VEER, J.

This criminal appeal, preferred u/s 374(2) of Code of Criminal Procedure, 1973 (*hereinafter to be referred as Cr.P.C.*), is directed against the judgment and order dated 27.01.1988 passed by Sessions Judge, Pithoragarh in Sessions Trial No.31 of 1987, whereby the learned Sessions Judge has convicted the appellant-Vikram Singh under Section 376 of Indian Penal Code, 1860 (*hereinafter to be referred as I.P.C.*) and sentenced him for seven years R.I. and fine of Rs.2,000/- and in default of payment of fine, one year further R.I. was awarded. Appellant-Vikram Singh was further convicted u/s 394 IPC and wa awarded sentence of five years R.I. and fine of Rs.2,000/- and in default of fine, one year further R.I. was awarded. Both the sentences were directed to run concurrently. It was also directed that from the fine, so realized, the prosecutrix Smt. Heera Devi shall be paid Rs.1,500/- out of it.

2. In brief, the prosecution case is that on 3.8.1987, when the prosecutrix Smt. Heera Devi was going towards Dunakot after taking her salary from P.H.C. Didihat, then the present appellant-Vikram Singh was chasing her in the way. At about 6:00 P.M. in the evening on the road going towards Dunakot from Pumsyari, appellant had caught hold her and caused injury and dragged her into the bush and there the appellant committed rape with her and also caused injury to her and the amount of Rs. 1,500/-, including the amount of salary which she had taken from PHC, Didihat, was also robbed by the present appellant. Thereafter, the prosecutrix

reached at her house Dunakot about 10-11 P.M. in the night and due to the injuries caused by the present appellant, she was unable to walk on 4.8.1987 and she also could not get any employee of the local police also on 4.8.1987 due to which she could not inform about the said incident to any police official. On 5.8.1987, she came to Didihat and was got medically examined by doctor and after that along with the injury report, she had filed the complaint to In-charge Officer, Primary Health Centre, Didihat, that complaint is Ex.Ka-2. The Medical Officer Incharge, Primary Health Centre, Didihat, Distt. Pithoragarh forwarded the said complaint to S.O. Didihat on 5.8.1987, that report of medical officer is Ex.Ka.2(1). The Medical Officer Incharge, Primary Health Centre, Didihat, Distt. Pithoragarh sent the complaint of prosecutrix along with his covering letter, that letter is Ex.Ka-5. The injury report which was submitted along with the complaint is Ex.Ka-4. On the basis of this report, a Chik FIR was prepared by Constable Clerk Uma Ram and that Chik FIR is Ex.Ka-6. After that the entry was made in the G.D., the copy of G.D. is Ex.Ka-7. Thereafter, the victim was sent for medical examination and the Medical officer, Women Hospital, Pithoragarh medically examined the prosecutrix on 6.8.2007 at 2:30 P.M. and prepared injury report, that report is Ex.Ka-1. The investigation of the case was entrusted to S.O., Jagdish Pal who recorded the statements of the prosecutrix and other witnesses and had taken in his possession the clothes of victim Smt. Heera Devi (Peticoat, Blouse and Saree) and prepared a Fard, i.e. Ex.Ka-3. For taking the said clothes into possession, the entry was also made in the G.D., the copy of said G.D. is Ex.Ka-8. Later on the investigation of the case was transferred to S.O. Sukhbir Singh on 8.8.1987. Ex.Ka-9 and Ex.Ka-12 are the pay rolls of victim Smt. Heera Devi. During the course of investigation, the I.O. prepared the site plan of the place of occurrence i.e. Ka.Ka-10. After completing the investigation, the I.O. submitted the charge sheet against the appellant under Sections 376/392/332/323 of IPC on 11.9.1987, that charge sheet is Ex.Ka-11.

3. Learned Munsif Magistrate, Didihat has committed the case to the court of Sessions on 15.10.1987 under section 209 Cr.P.C. after complying with the provisions of Section 207 Cr.P.C.

4. On 07.12.1987, learned Sessions Judge, Pithoragarh framed the charge against the appellant Vikram Singh u/s 376/394 of IPC. The charge was read over and explained to the appellant who pleaded not guilty and claimed to be tried.

5. To prove its case, the prosecution has examined P.W.1 Dr. Usha Upreti, who has medically examined the victim Smt. Heera Devi, P.W.2 Heera Devi, the prosecutrix and complainant of the case, P.W.3 Dr. M.S. Martolia who has examined the injuries on the person of victim, P.W.4 Gopal Singh, P.W.5 Constable Clerk Uma Ram, P.W.6 Jagdish Pal, I.O. of the case, P.W.7 Dr. B.D. Joshi and P.W.8 Narayan Ram Arya, Health supervisor, PHC Didihat.

6. Thereafter, the statement of the appellant was recorded u/s 313 of Cr.P.C. who had denied the allegations made against him. However, he had not produced any oral or documentary evidence.

7. After appreciating the evidence on record and after hearing learned counsel for the parties, the learned Sesions Judge, Pithoragarh vide his judgment and order dated 27.01.1988 convicted the appellant-Vikram Singh under Section 376 of IPC and sentenced him for seven years R.I. and fine of Rs.2,000/- and in default of payment of fine, one year further R.I. was awarded. He was further convicted u/s 394 IPC and was awarded sentence of five years R.I. and fine of Rs.2,000/- and in default of fine, one year further R.I. was awarded. Both the sentences were directed to run concurrently. It was also directed that from the fine, so realized, the prosecutrix Smt. Heera Devi shall be paid Rs.1,500/- out of it. Against the said judgment and order dated 27.01.1988, the appellant has filed present appeal before this Court.

8. I have heard Sri Lokendra Dobhal, learned counsel for the appellant and Sri Harish Pujari, learned Addl. G.A. for the State and perused the entire material available on record.

9. To prove its case, the prosecution has examined P.W.1 Dr. Usha Upreti who has stated that on 6.8.1987, she was posted as Medical Officer in Female Hospital, Pithoragarh. On that day, Smt. Heera Devi was medially examined by her and she prepared the injury report at the time of medical examination, that report is Ex.Ka-1. She has stated that Smt. Heera Devi was complaining about pain in her left breast and black spots were also there and on the muscle of the right hand, there was also a black spot. On examination of the private parts, she found that there was slight tenderness present in left fornix. The vaginal smear of prosecutrix Smt. Heera Devi was sent for examination B.D. Pandey Hospital and report to that effect she received on 11.8.1987 and that fact she had also mentioned in the report i.e Ex.Ka-1. She has further stated on a question being asked by the court that black patches means injuries caused by the violence. She has further stated that Smt. Heera Devi was a married lady.

10. P.W.2 is Smt. Heera Devi who has stated that appellant Vikram Singh was known to her and he was a Peon of Patwari, Chaubati. On 3.8.1987 she had gone to Didihat PHC from Dunakot to take her salary. On the date of incident, she was posted as midwife (दाई) in Mother Child Welfare Centre, Dunakot. She had received the salary from PHC Didihat and went towards Dunakot. She was going Dunakot on her foot and on the way down towards Pumsyari, appellant Vikram Singh met her and started teasing and chasing her however she continued to move towards Dunakot. When she reached 4 Kms. away from Pumsyari towards Dunakot, on the pathway (*Pagdandi*) then appellant Vikram Singh had dragged her towards bushes below the level of *Ghodiya* road. At that time, the time was about 6:00 P.M. and no person was there. She had cried and also refused the appellant not to do so but the appellant did not agree to it. Appellant had closed her

mouth and thereafter he severely pressed her breasts (right and left both) due to which bluish spots came on her breasts. After that he also caused injury in her hand and committed rape with her forcibly and also torn her blouse and petticoat. Thereafter, he committed sexual intercourse with her forcibly against her with. She had tried to stop him but she could not get success. After committing the rape, appellant took out Rs.1,500/- from her purse and her wrist watch was also misplaced and bangles were also broken. After that appellant had gone from the place of occurrence. After the incident she was weeping on the place of occurrence for one hour because she was unable to move. After two hours of incident she went towards Dunakot and reached there in the night at 10-11 P.M. On the next day she remained in the room in the house because she was unable to move. On 5.8.1987 she had gone to PHC Didihat where she had narrated the incident to Dr. Martolia and thereafter she was medically examined by him. After that she had got the report written and she submitted the same to Dr. Joshi, that report is Ex.Ka-2. Thereafter, Dr. Joshi forwarded that report to P.S. Didihat and on the next day i.e. 6.8.1987 she was medically examined in the Women Hospital, Pithoragarh where she was taken by police constables. At the time of incident, she was wearing yellow saree, red petticoat and while blouse and in her petticoat and saree, spots of semen of appellant had come. All these three clothes were taken by the I.O. into possession and were sealed on the spot and a Fard was prepared, i.e. Ex.Ka-3. This witness was cross-examined at length by the defence counsel but nothing has come out in her statement which may create any doubt in her evidence. The evidence of this witness is natural, believable and reliable.

11. P.W.3 is Dr. M.S. Martolia who has stated that he was posted as Medical Officer is PHC Didihat on 5.8.1987. On that day Smt. Heera Devi who was posted as midwife (दाई) in his department, was examined by him and he found following injuries on her person: -

A. *Abrasion 30. x 2.5 cm size on the lateral side of right breast, bluish in colour.*
B. *Abrasion 1.5 x 2.5 cm size on lower inner quadrant of left breast, bluish in colour, tender.*
C. *Abrasion 4.0 x 3.5 cm on medial side of right upper arm. Bluish in colour.*
D. *Pain and tenderness on both the thighs. No evidence of injury seen.*

At the time of medical examination, he has prepared the injury report i.e. Ex.Ka-4. He has also stated that these injuries could be caused by friction and rub by some blunt and hard object and were simple in nature and their duration was about 2-3 days before. He has further stated that the injury on both the breasts could possibly be caused by rubbing with hands and injury of thigh was also possible in the same manner and the injury mentioned in Column (C) quoted above, was also caused by the same manner. He also stated that all these injuries could be caused on 3.8.1987 at 6:00 P.M. He has also identified the handwriting of Dr. B.D. Joshi which was written on Ex.Ka-2 in English and that endorsement written by Dr. Joshi is Ex.Ka-2(1).

12. P.W.4 is Gopal Singh who has not supported the prosecution case and was declared hostile.

13. P.W.5 is Constable Clerk Uma Ram who has stated that on 5.8.1987, he was posted as Constable Clerk in P.S. Didihat. On that day, a report Ex.Ka-2 was lodged by Smt. Heera Devi in the police station along with covering letter of Medical Officer. The covering letter which was come along with the report was signed by Dr.B.D. Joshi, i.e Ex.Ka-5. On the basis of report Ex.Ka-2, he had prepared the Chick FIR i.e. Ex.Ka-6 and the entry was also made in the G.D., the copy of G.D. is Ex.Ka-7. The investigation of the case was entrusted to Sri Jagdish Pal. On 6.8.2007 at 7:05 A.M. Smt. Heera Devi had given her clothes which she was wearing at the time of incident i.e. blouse, petticoat and Saree in the police station. In the Saree and Petticoat, there were spots of semen which were taken into possession by the I.O. and sealed on the spot

and a Fard was prepared, i.e. Ex.Ka-3 and entry was made in the G.D., i.e. Ex.Ka-8.

14. P.W.6 is S.O. Jagdish Pal, who is the I.O. of the case. He has stated that on 5.8.1987 he was posted as S.O. Askot and on those days he was also having charge of P.S. Didihat because on those days, S.O. and Second Officer were on leave and the investigation was entrusted to him. On 6.8.1987 he started the investigation of the case. On 6.8.1987 at 7:05 A.M., Smt. Heera Devi had given him the clothes in the police station which she was wearing at the time of incident. There were spots of semen on the Saree and Petticoat. The Saree, petticoat and blouse of victim Smt. Heera Devi were sealed on the spot and a Fard was prepared i.e. Ex.Ka-3 and victim Smt. Heera Devi was sent for medical examination at Women Hospital, Pithoragarh along with Constable Prem Singh. On the next day i.e. 7.8.1987, on the pointing out of Smt. Heera Devi, he had prepared the site plan of the place of occurrence i.e. Ex.Ka-10. During the course of investigation, he had recorded the statements of witnesses. On 8.8.1987, the investigation of the case was entrusted to Sukhbir Singh, S.O. Didihat. S.O. Sukhbir Singh after completing the investigation submitted the charge sheet against the appellant i.e. Ex.Ka-11. He had identified the signatures of Sukhbir Singh as he had worked along with him and had seen him while reading and writing.

15. P.W.7 is Dr. B.D. Joshi who has stated that Smt. Heera Devi was posted as midwife (दाई) in Mother Child Welfare Centre, Dunakot in the month of July, 1987 and that center was under the PHC Didihat and the salary was being distributed and paid from the Didihat PHC. Smt. Heera Devi had come on 3.8.1987 to take her salary at Didihat. He had taken the original payment register along with him in the court and on the basis of that register, he has stated that her salary of July, 1987 was Rs.986.60 and the arrear of D.A. of July, 1986 to June, 1987 was Rs.301.20 and the total amount of Rs. 1287.80 was paid to Smt. Heera Devi on 3.8.1987 and

the copy of that register he had filed i.e. Ex.Ka-12. He had further submitted that the above said payment was paid to Smt. Heera Devi on 3.8.1987 in case.

16. P.W.8 is Narayan Ram Arya who has stated that he was posted as Health Supervisor in PHC, Didihat and he was also looking after work of Head Clerk and the work of accounts also. The bills of salary of July, 1987 and the arrear bills were prepared by him and the salary of July, 1987 and the arrears where distributed on 3.8.1987. On 3.8.1987 Smt. Heera Devi had come from Dunakot at PHC Didihat and on that day, he had paid Rs.1287.80 to her as salary and arrears and description of the salary and arrears was given in Ex.Ka-12 which was correct as per record and Smt. Heera Devi had gone to Dunakot on the same day.

17. After that the statement of the appellant was recorded u/s 313 Cr.P.C. who had denied that allegations made against him and in reply to Question No.27, he has stated that Heera Devi was requesting his wife for family planning but he had refused for the same. On his refusing, Smt. Heera Devi had told him that she will falsely implicate him in some other case. Kalyan Singh, who was a peon in Dunakot, was having good relations with Smt. Heera Devi and Kalyan Singh had enmity with him due to the reason of his transfer and he has also stated that he has been falsely implicated by Kalyan Singh and Heera Devi. In may, 1987 Heera Devi also requested him for family planning, the report to that effect he had lodged in Didihat.

18. Learned counsel for the appellant submitted that FIR in the present case id delayed and the delay in lodging the FIR is not sufficiently explained by the prosecution. This argument advanced by learned counsel for the appellant is not sustainable in the eye of law. As per the evidence discussed above, the present appellant had committed rape with the victim Smt. Heera Devi on 3.8.1987 at about 6:00 P.M. in the evening when she was going from Didihat to Dunakot and there was nobody to help her as she had cried for the help

also. From the place of occurrence, Didihat is about 7 Kms. away and Dunakot was about 3-3½ Kms. away from the place of occurrence and thereafter, she had reached at Dunakot in between 10-11 P.M. On 4.8.1987 she was unable to move due to the injuries caused by the appellant and further she also could not find any police official on that day. On 5.8.1987 she had gone to PHC, Didihat and complained the matter to P.W.3 Dr. M.S. Martolia who had medically examined her and after that she had given the complaint to the Officer Incharge of PHC Didihat where Dr. B.D. Joshi sent her report along with his covering letter Ex.Ka-5 to P.S. Didihat and thereafter the FIR was lodged on 5.8.1987 at 5:00 P.M. In this way, the delay in lodging the FIR is explained by the statement of victim Smt. Heera Devi as well as the facts and circumstances of the case narrated above by the prosecution.

19. Learned counsel for the appellant further submitted that the prosecution has failed to prove its case against the appellant on the basis of the evidence produced by the prosecution. This argument advanced by learned counsel for the appellant is not supported by any evidence. As discussed above, Smt. Heera Devi, victim/prosecutrix had gone from her hosue Dunakot to Didihat to get her salary as she was working as midwife (दाई) in the Mohter Child Health Centre in Dunakot and she had taken the salary and the arrears of Rs.1287.80 from PHC Didihat and that fact is also supported by the statements of P.W.7 Dr. B.D. Joshi and P.W.8 Narayan Ram Arya who have stated in their statements that victim Smt. Heera Devi had taken salary and arrears amounting to Rs.1287.80 from PHC, Didihat and had gone to Dunakot on the same day. When she had reached at about 4 Kms. towards Dunakot from Pumsyari on the pathway (*Pagdandi*) then the present appellant who was chasing and teasing her, had dragged her towards bushed below the level of Ghoria road and committed rape with her against her with forcibly and also taken Rs.1500/- from her purse forcibly without her consent and also caused injuries to

her breasts, hand and other parts of the body. After that victim had reached Dunakot in the night at 10-11 P.M. and due to that said incident she was unable to move on 4.8.1987 and further no police official was available in Dunakot for her complaint. On 5.8.1987 she had come to Didihat and had complained the matter to concerning officers where her complaint was sent to the Police Station Didihat along with convering letter Ex.Ka-5. This fact is also proved from the statement of Smt. Heera Devi that she was subjected to rape by the present appellant against her will forcibly on 3.8.1987 at 6:00 P.M. about 4 Kms. away towards Dunakot from Pumsyari in the forest area where except her and the appellant, nobody else was there. There the present appellant caused injury to her and also taken Rs.1,500/- from her purse. Thus, in this way the appellant has committed the offence punishable u/s 376 IPC by committing rape with Smt. Heera Devi against her will forcibly and further by causing the injuries to her voluntarily, had robbed Rs.1,500/- from her purse without her consent and in this way, committed the offence punishable u/s 394 IPC. The statement of victim Smt. Heera Devi P.W.2 is reliable, believable and inspires implicit confidence and there is no reason to disbelieve the statement of P.W.2 Heera Devi. The explanation given by the appellant that he has been falsely implicated due to the reason that victim had asked him for family planning and he and his wife had refused for the same, the same is an after thought story and is not supported by any oral or documentary evidence and this after thought statement was given by the appellant only to save himself.

20. Learned counsel for the appellant further submitted that there is no medical evidence supporting the prosecution's case. This argument advanced by learned counsel for the appellant is also not sustainable in the eye of law. After examining the medical report Ex.Ka-1 of victim Smt. Heera Devi, on external examination, the lady doctor found that on touching the left breast, the prosecutrix complained of pain

and black patches were also notices. On internal examination of private parts of the prosecutrix, it was notice that labia majora of left side was tender on touching and slight tenderness was also present in fornix. These injuries itself show that the incident as narrated by the prosecution is correct and justified as per the injury report Ex.Ka-1 given by Dr. Usha Upreti, P.W.1 as well as injury report given by Dr. M.S. Martolia P.W.4 Medical Officer, PHC, Didihat i.e. Ex.Ka-4. Thus, in this way it is ample clear that the case of the prosecution is proved beyond reasonable doubt against the appellant u/s 376/394 IPC.

21. In view of the above, the judgment and order dated 27.1.1988 passed by Sessions Judge, Pithoragarh is correct and justified as per the evidence produced before him and I do not find any illegality or irregularity in the said judgment and order.

22. For the reasons recorded above, the appeal is devoid of merit and is herby dismissed. The judgment and order dated 27.11.1988 passed by Sessions Judge, Pithoragarh convicting the appellant under Section 376 of IPC and sentencing him for seven years R.I. and fine of Rs.2,000/- and in default of payment of fine, one year further R.I. as well as his appellant's conviction u/s 394 IPC and his sentence of five years R.I. and fine of Rs.2,000/- and in default of fine, one year further R.I., is hereby confirmed.

23. Let the record of the case be sent back to trial court concerned for compliance of the order. The sentence already served out by the appellant, during the period of trial or during the period of appeal, shall be adjusted after verifying from the records.

(Dharam Veer, J.)

October 30, 2007

Rajeev Dang